

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8435 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHETH ENTERPRISES PVT LTD

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioners
MR KETAN A DAVE for Respondent No. 1
MS AVANI S MEHTA for Respondent No. 2
MR MR GEHANI for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/01/98

ORAL JUDGEMENT

Rule. Mrs. Avani Mehta appears and waives service of rule on behalf of respondent nos.1 and 2. Mr.M.R.Genai appears and waives service of Rule on behalf of Respondent Nos.3 to 6. In the facts and circumstances, the matter is taken up for to day for final hearing.

This petition is filed by the petitioner for an appropriate writ, direction and/or order restraining the respondents, their servants and agents and nominees from taking any action pursuant to notice at Annexure.N issued

on 31st July 1997. A prayer is also made directing the respondent authorities to release the goods provisionally.

At the time of hearing, Mr. Joshi, learned counsel for the petitioner did not press validity of notice at this stage. He, however, submitted that in accordance with the provision of Customs (Provisional Duty Assessment) Regulations, 1963, after completion of provisional assessment, an order can be passed regarding release of goods on the basis of such assessment. Regulation 2 reads as under:

"2. Conditions for allowing provisional assessment.- Where the proper officer on account of any of the grounds specified in sub-section (1) of Section 18 of the Customs Act, 1962 (52 of 1962), is not able to make a final assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty that is most likely to be levied hereinafter referred to as the provisional duty. If the importer or the exporter, as the case may be, executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty."

Mr. Joshi also submitted that for the said purpose he made applications to the authorities on 3.2.1997, 25.2.97, 25.3.97 and 29.5.97. The authorities have not passed any order so far.

We have heard the learned counsel for the respondentts. In the facts and circumstances of the case, and without expressing any opinion on merits, ends of justice would be met if in the light of Regulation 2 of the Regulations, referred to hereinabove, the authorities are directed to provisionally release goods on depositing with the appropriate officer an amount to the tune of 20% of the differential duty. The appropriate officer is directed to provisionally release the goods on necessary bond being executed by the petitioner.

We may observe that we are not expressing any

opinion on merits of the matter and only for a limited prayer passing this order directing appropriate officer to release the goods provisionally on the above terms and conditions. Rule is made absolute to the above extent. The parties are directed to take all the contentions available to them in accordance to law. No order as to costs.

Liberty to apply in case of difficulty.

Dt. 23.1.1998. (C.K.THAKKER J.)

(R.P.DHOLAKIA J.)